

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Prentice Wheatley,

Civil No. 12-880 DWF/AJB

Plaintiff,

v.

**ORDER ADOPTING REPORT AND
RECOMMENDATION ON MOTION
FOR SUMMARY JUDGMENT BY
DEFENDANT PHYSICIANS**

Michelle Smith, Stephen Craane,
Keith Krueger, David Paulson,
Nanette Larson, Kathy Reid, Scott
Schantzen, Jordan Buth, Sgt. Adam
Murphy, Steve McCarty, Mike McMahon,
Steve Hammer, David Reishus, and
Vuthy Long,

Defendants.

This matter is before the Court upon Plaintiff Prentice Wheatley's ("Plaintiff") objections, (Doc. No. 184), to Chief Magistrate Judge Arthur J. Boylan's June 25, 2013 Report and Recommendation, (Doc. No. 180), insofar as it recommends that the motion for summary judgment by Defendants Dr. Stephen Craane ("Dr. Craane") and Dr. Keith Krueger ("Dr. Krueger") be granted and the claims against these Defendants be dismissed with prejudice. On August 26, 2013, Defendants Dr. Craane and Dr. Krueger filed a Memorandum of Law in Opposition to Plaintiff's Objections. (Doc. No. 192.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiff's objections.

In the Report and Recommendation, Chief Magistrate Judge Boylan concluded that Plaintiff has not presented *prima facie* evidence to demonstrate an objectively serious medical need that either Defendants Dr. Craane or Dr. Krueger actually knew of but deliberately disregarded as to either pain relief or a specialist referral, and therefore recommended that Plaintiff's Eighth Amendment claims against these defendants be dismissed. (Doc. No. 180 at 16.) In addition, with respect to Plaintiff's medical malpractice claim, the Chief Magistrate Judge explained that in the absence of an affidavit or expert review and identification of an expert witness and summary of expert testimony, Plaintiff failed to establish the applicable standard of care and any deviation from such standard, and thus concluded that Plaintiff has not alleged a *prima facie* case of medical malpractice. (*Id.* at 20.) Accordingly, the Chief Magistrate Judge recommended that Plaintiff's medical malpractice claim also be dismissed.

Plaintiff argues that the Chief Magistrate Judge should have reached a different decision and asserts that: (1) the Chief Magistrate Judge improperly assessed the facts and failed to draw all reasonable inferences in favor of Plaintiff; (2) the Chief Magistrate Judge erred in deciding disputed facts and assessing credibility; (3) the Chief Magistrate Judge ignored material facts; (4) the Chief Magistrate Judge erred in concluding that there was no deliberate indifference; (5) the Chief Magistrate Judge improperly construed Plaintiff's medical claim as a disagreement with medical treatment; (6) the Chief Magistrate Judge erred in concluding that Plaintiff failed to present sufficient evidence to

support a claim for deliberate indifference; and (7) the Chief Magistrate Judge erred in dismissing Plaintiff's medical malpractice and negligence claim.

Having carefully reviewed the record, the Court concludes that Plaintiff's objections do not warrant departure from the Chief Magistrate Judge's ultimate Recommendation, and agrees with the conclusion that Plaintiff's claims of deliberate indifference and medical malpractice fail as a matter of law. Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Plaintiff Prentice Wheatley's objections, (Doc. No. [184]), to Chief Magistrate Judge Arthur J. Boylan's June 25, 2013 Report and Recommendation are **OVERRULED**.

2. Chief Magistrate Judge Arthur J. Boylan's June 25, 2013 Report and Recommendation, (Doc. No. [180]), is **ADOPTED**.

3. The motion for summary judgment by Defendants Dr. Stephen Craane and Dr. Keith Krueger, (Doc. No. [110]), is **GRANTED** and the claims against these Defendants are **DISMISSED WITH PREJUDICE**.

Dated: September 16, 2013

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge